

ESTTA Tracking number: **ESTTA800656**

Filing date: **02/10/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Wyeth Holdings LLC
Granted to Date of previous extension	02/12/2017
Address	235 East 42nd St. New York, NY 10017 UNITED STATES

Attorney information	Paul C Llewellyn ARNOLD & PORTER KAYE SCHOLER LLP 250 West 55th Street New York, NY 10019-9710 UNITED STATES paul.llewellyn@apks.com, tmdocketing@apks.com, john.rynkiewicz@apks.com, clara.wang@apks.com Phone:2128367828
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Applicant Information

Application No	86957167	Publication date	08/16/2016
Opposition Filing Date	02/10/2017	Opposition Period Ends	02/12/2017
International Registration No.	NONE	International Registration Date	NONE
Applicant	Michel Ontiveros, Fernando Colonia Guadalupeana Guadalajara, 44260 MEXICO		

Goods/Services Affected by Opposition


Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Dietary supplements; Food supplements; Sanitary preparations for medical use


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3399034	Application Date	10/26/2006
Registration Date	03/18/2008	Foreign Priority	NONE

		Date	
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of an arching band of colors ranging, from left to right, from red to orange, to yellow, to green, to blue.		
Goods/Services	Class 005. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 Dietary and nutritional supplements		

U.S. Registration No.	4791396	Application Date	01/21/2014
Registration Date	08/11/2015	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of the colors light and dark reds, light and dark oranges, light and dark yellows, light and dark greens, and light and dark blues appearing from left to right as vertical bars forming an arching band, looking like a stylized rainbow.		
Goods/Services	Class 005. First use: First Use: 2014/05/15 First Use In Commerce: 2014/05/15 Dietary and nutritional supplements; vitamins		

Attachments	77029694#TMSN.png(bytes) 86170638#TMSN.png(bytes)
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	Pfizer - Ontiveros Notice of Opp- SURE BALANCE.pdf(36983 bytes)
Signature	/paul c. llewellyn/
Name	Paul C Llewellyn
Date	02/10/2017

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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WYETH HOLDINGS LLC,	:	
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Opposer,	:	
	:	
v.	:	
	:	
FERNANDO MICHEL ONTIVEROS,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Applicant Serial No:	86957167
Filed:	March 29, 2016
Published for Opposition:	August 16, 2016
Mark:	SURE BALANCE and Design

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer Wyeth Holdings LLC, a Maine corporation located at 235 East 42nd Street, New York, New York and a wholly owned subsidiary of Pfizer Inc., located at 235 East 42nd Street, New York, New York (collectively, “Opposer” or “Pfizer”), believes it will be damaged by the registration of the mark SURE BALANCE and Design shown in Application Serial No. 86957167, and hereby opposes the same.

As grounds for opposition, Opposer, by and through its undersigned counsel, alleges that:

1. Pfizer is a research-based biomedical and pharmaceutical company in the business of discovering, developing, manufacturing and delivering medicines.

2. Pfizer has used iterations of a design mark consisting of an arching band of colors (the “Arching Band of Colors Design Trademark”) on nutritional supplement preparations continuously since at least June 1, 2007, including those shown immediately below:



(Reg. 3399034)



(Reg. 4791396)

3. Pfizer is the owner of U.S. Trademark Registration Nos. 3399034 and 4791396 on the Principal Register for the Arching Band of Colors Design Trademark, covering “dietary and nutritional supplements” in International Class 5.

4. Said registrations are valid and subsisting, and Pfizer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Pfizer’s testimony period.

5. By virtue of Pfizer’s substantial use, sales, advertising, and promotion of dietary and nutritional supplements using the Arching Band of Colors Design Trademark throughout the United States, the Arching Band of Colors Trademark has become a famous and well-known mark, has become distinctive of Pfizer’s product, and has become famous within the meaning of Section 43(c) of the Lanham Act, as amended, 15 U.S.C. § 1125(c).

6. Despite Pfizer's long prior common law and statutory rights in the Arching Band of Colors Design Trademark, Applicant Fernando Michel Ontiveros ("Applicant"), with at least constructive notice of Pfizer's federal registration, and long after Pfizer established rights in and to the Arching Band of Colors Design Trademark, adopted and filed an application under Lanham Act § 44(e) based on a claimed foreign registration for the mark SURE BALANCE and Design. The subject application covers "dietary supplements," "food supplements," and "sanitary preparations for medical use" in International Class 5. The applied for mark is depicted immediately below:



(Serial No. 86957167)

7. Applicant's mark was published for opposition on August 16, 2016. Pfizer filed for Extensions of Time to Oppose on September 15, 2016 and on December 8, 2016. The Trademark Trial and Appeal Board has granted an extension until February 12, 2017 to oppose the subject application.

8. Pfizer's Arching Band of Colors Design Trademark has priority over Applicant's mark. The filing date of Pfizer's application for Reg. No. 3399034 is October 26, 2006, and Pfizer's date of first use is June 1, 2007. The filing date of Pfizer's application for Reg. No. 4791396 is January 21, 2014, and Pfizer's date of first use is May 15, 2014. Pfizer's filing dates and dates of first use are prior to the March 29, 2016 filing date of the subject application.

9. Pfizer's Arching Band of Colors Design Trademark became famous long before the April 8, 2016 filing date of Applicant's application.

10. Applicant's SURE BALANCE and Design mark is substantially or highly similar to the Pfizer's Arching Band of Colors Design Trademark in appearance and commercial impression. The text portion of the applied-for mark has little or no distinctiveness, and therefore does not reduce the likelihood of confusion, given the similarity between the design portion of the applied-for mark and Pfizer's registered mark.

11. The goods set forth in the subject application are identical or closely related to the goods for which Pfizer's Arching Band of Colors Design Trademark is registered and used, and many who encounter Applicant's mark are likely to think that the same company that offers Applicant's products might be authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Pfizer's products.

12. As a result, Applicant's applied-for mark SURE BALANCE and Design, if used in conjunction with the goods set forth in the subject application, is likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship or affiliation of Applicant's goods.

13. Applicant's applied-for mark SURE BALANCE and Design so resembles Opposer's previously used and registered Arching Band of Colors Design Trademark, as to be likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

14. Applicant's applied-for mark SURE BALANCE and Design is substantially similar in appearance to Pfizer's distinctive and famous Arching Band of Colors Design Trademark. As such, the applied-for mark impairs and is likely to impair the distinctiveness of the Arching Band

of Colors Design Trademark and causes and is likely to cause dilution by blurring of those marks.

15. Pfizer will be damaged by registration of Applicant's SURE BALANCE and Design mark because such registration will support Applicant's dilution of Pfizer's Arching Band of Colors Design Trademark, and will give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Pfizer.

WHEREFORE, Opposer respectfully prays that this Opposition be sustained and that registration to Applicant be refused.

The Patent & Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposer's attorneys, Arnold & Porter Kaye Scholer LLP, Deposit Account No. 11-0228.

Date: February 10, 2017

/paul c llewellyn/

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